IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1201 OF 1997

Mumbai Education Trust & Anr. .. Petitioners
V/s
Municipal Corporation of Gr.Mumbai & Ors.. Respondents

Mr.Rajesh Patil i/by M/s.Mahesh Jani & Co.for the Petitioners.
Mr.V.Mahadik for Mumbai Municipal Corporation.
Mr.M.D.Naik, AGP for State.
Mr.H.S.Shreepadmurthi with Mr.M.J.Shetty for Res.No.6.
Mr.I.C.Mecwan for Respondent No.7.

CORAM : DR.S.RADHAKRISHNAN &
SMT.V.K.TAHILRAMANI, JJ.

DATE : 28th November, 2006.

P.C.:

1. By this Petition, the Petitioner - Mumbai Education Trust which runs and manages various educational institutions is seeking a direction from this Court thereby directing the Respondents viz.the Municipal Corporation, Municipal Commissioner and the Superintendent of Gardens by way of Writ of Mandamus, directing them to allot the open space at CTS No.A/761, Bandra Reclamation, Bandra (West), Mumbai, in favour of the Petitioner Trust purely for the purpose of protecting the said open space which consists of a play ground and a garden.

2. The brief facts are that the Petitioner's various Educational Institutions which are situated just adjacent to the said plot of open space consisting of a play-ground and a garden. It appears that the said open space consisting of play-ground and the garden was

handed over to the Respondent No.6 M/s.Rizvi Education Society by the Municipal Corporation pursuant to the agreement dated 20th November, 1991 for a period of five years on certain terms and conditions prescribed by the Respondent Corporation. There is no dispute that the said agreement expired on 19th November, 1996. The Respondent Corporation found that the Respondent No.6 M/s.Rizvi Education society was not properly maintaining the said open space and putting it to full public use, and hence, by its letter dated 20th December, 1996 the Respondent Corporation refused the request made by the Respondent No.6 M/s.Rizvi Education Society for further extention and accordingly directed to handover possession of the said open space consisting of a play-ground and a garden back to the Municipal Corporation. Thereafter the Respondent Corporation had taken physical possession of the said play-ground and garden.

3. It appears that the Petitioner - Mumbai Education Trust had made an application to the Respondent Corporation on 15th January, 1996 pointing out that the Petitioner Trust is running various educational institutions including the Secondary School, Primary School, Degree Colleges and also the post graduate diploma courses in management, just adjacent to the aforesaid play-ground and the garden. It appears that the said play-ground and the garden is known as General Arunkumar Vaidya play-ground and garden situated at

Bandra Reclamation, Bandra, Mumbai.

4. It is the case of the Petitioner Trust that pursuant to the said application, the Deputy Municipal Commissioner had convened a meeting with the Petitioners as well as the Respondent No.6 -M/s.Rizvi Education Society and finally the Deputy Municipal Commissioner had directed the Superintendent of Gardens to allot the said play-ground and the garden to the Petitioner-Trust. The said allotment was to be approved by the Municipal Commissioner, however, in the meanwhile, the Respondent No.6 Soceity had approached the then Hon'ble Chief Minister to intervene and allot the said open space to the Respondent No.6 Society.

5. The Petitioner having come to know the same, had filed this petition challenging the authority of the then Chief Minister to intervene, as the said land vests in the Municipal Corporation and for the proper maintenance and use the said land (playground and garden) was being allotted to any society or body so that the said play-ground and garden can be put to maximum public use. This Court while admitting this Petition on 22.9.1997 had directed the Municipal Corporation, Municipal Commissioner and the Superintendent of Gardens to maintain the aforesaid open space consisting of play-ground and garden at CTS No.A/761, until further orders.

6. During the pendency of this Petition, it appears that General Arunkumar Vaidya Nagar Rahivasi Sangh, which is a registered organisation consisting of 26 Co-operative Societies in the vicinity had intervened in this petition as Respondent No.7 and sought a direction that the Respondent Corporation ought to allot the said garden to the said Respondent No.7-Society for maintaining the same at their own costs for public purpose.

7. It appears that during the pendency of this Petition, a small portion of the said plot/open space has already been encroached upon by certain hutment dwellers who have illegally erected certain hutments on the said plot/open space on the peripheral area, as indicated in the plan tendered by the learned Counsel for the Petitioner-Trust. The encroached area is shown in the shaded manner with the remark "Area under Encroachment". The said plan is taken on record and marked as ‘X’ for identification. It appears that even a part of the compound wall of Petitioner Trust has been broken by the unauthorised occupants.

8. Mr.Rajesh Patil, the learned Counsel appearing on behalf of the Petitioner Trust has pointed out that in Mumbai there is a severe dearth of open and green public spaces and under these circumstances, the learned Counsel has made a strong plea that it was already agreed by the Respondent Corporation to allot the said

open space to the Petitioner Trust in the year 1996 itself, but for the intervention of the then Chief Minister it could not be allotted in 1996 to the Petitioner Trust.

9. The learned Counsel for the Petitioner-Trust has pointed out that the Respondent Corporation in its affidavit in reply has admitted that it is facing severe financial crunch to maintain such play-grounds and gardens. Mr.Patil, the learned Counsel for the Petitioner has further submitted that the Petitioner Trust is ready and willing to maintain the play-ground and the garden at their own costs by constructing a regular compound wall around the aforesaid open space. The learned Counsel for the Petitioner has further submitted that the Petitioner will also provide 24 hours security so as to prevent any misuse or encroachment of the said play-ground and the garden area. Mr.Patil has stated that the Petitioner Trust is ready and willing to build a Tennis Court, a Cricket Pitch, and a Jogging Track on the play-ground at their own costs. Mr.Patil also made it clear that the said play-ground will be made available to all the educational institutions in the vicinity so as to enable them to hold their annual sport competitions on Saturdays and Sundays with prior permission from the Petitioner Trust. He also made it clear that the said play-ground will be made available to everyone and the access to any member of public will be allowed during the morning and evening hours without

any charge for the same. He also states that the children from other Colleges and the Schools in the vicinity will also be allowed during the College/ School hours. The learned Counsel also made it clear that the Petitioner Trust will not charge any amount to anybody for entry to the said play-ground. The learned Counsel for the Petitioner has also submitted that the Petitioner Trust will plant and protect the trees, flower plants etc., at their own cost around the playground and garden.

10. Mr.Murthi, The learned Counsel for Respondent No.6 M/s.Rizvi Education Society has submitted that the said society was maintaining the said plot consisting of play-ground and garden for the last five years from 1991 to 1996 and hence the Respondent No.6 should be allowed to continue to maintain the same. However, the learned Counsel Mr.Murthi conceded that the said M/s.Rizvi Education Society's Educational Institutions are situated about three Kilometers away from the aforesaid plot consisting of play-ground and garden. Over and above, the learned Counsel for Respondent No.6 could not dispute that the Respondent Corporation had taken back possession of the said plot from Respondent No.6 Soceity after the expiry of five years period in 1996 and that the Respondent Corporation had refused to grant any further extension in favour of Respondent No.6 Society.

11. Mr.Mecwan, the learned Counsel appearing for

Respondent No.7- General Arunkumar Vaidya Nagar Rahivasi Sangh categorically stated on instructions from the secretary of the said Rahivasi Sangh that the said Rahivasi Sangh is very keen to maintain the garden. He submits that, if the garden is allotted to the said Rahivasi Sangh, they will maintain the metal fencing for the garden in a good manner and will provide 24 hours security so as to prevent any encroachment or misuse of the said garden. He also assured that the Rahivasi Sangh will plant and protect more trees and flower plants in the garden and will also provide a lawn and a walking track in the said garden so that the same can be utilised by the residents of the said area. He also assured that the garden will be open to all the members of public free of cost and there will be no entry fee for the same.

12. Mr.Patil, the learned Counsel appearing on behalf of the Petitioner Trust has fairly stated that if the Respondent No.7 Rahivasi Sangh is very keen to maintain the garden, the Petitioner Trust has no objection for the same and he made it clear that in the event the Respondent No.7 Rahivasi Sangh finds it difficult to maintain the said garden as aforesaid, the Petitioner Trust is always ready and willing to take over the said garden and will provide all the aforesaid amenities at their own cost.

13. We have heard the learned Counsel for the parties.

We have also perused the affidavit in reply filed by the Respondent Corporation. Due to severe financial crunch, the Respondent Corporation has shown its inability to maintain the play-ground and the garden in a proper manner. It is common knowledge in Mumbai that such open spaces are always encroached upon and misused, thereby the public is deprived of the play-grounds and gardens. The learned Counsel for the Respondent Corporation has also conceded that the Respondent Corporation is unable to maintain the said play-ground and garden due to severe financial crunch. So far as Respondent No.6 M/s.Rizvi Education Society is concerned, it is the fact that the Respondent Corporation has refused to grant further extension in its favour to continue to maintain the said play-ground and garden after the expiry of five years period in 1996. It is apparent that the Respondent No.6 Society could not maintain the said open space and garden in a proper manner and in fact various encroachments have taken place on the said land as is evident from some photographs tendered by the learned Counsel for the Petitioner. Hence, it would not be just and proper to allot the said open space and garden to Respondent No.6. Over and above, the College of Respondent No.6 Society is at a distance of three Kilometers from the said Playground/ Garden, hence not put to optimal use. So far as the Petitioner Trust is concerned, the Educational Institutions run by the Petitioner Trust are just adjacent to the said playground and garden. Even the Respondent

No.7-Rahivasi Sangh is also adjacent to the said garden.

14. In the facts and circumstances mentioned above, and in order to avoid encroachments and misuse of public open spaces and green spaces, and in order to have the proper maintenance of the plot/open space consisting of play-ground and the garden, we direct that the play-ground should be allotted by the Respondent Corporation to the Petitioner Trust (Mumbai Education Trust) and the garden should be allotted to Respondent No.7 (General Arunkumar Vaidya Nagar Rahivasi Sangh), initially for a period of five years and to be renewed from time to time, on their strictly complying with all conditions on their entering into usual agreements with the Municipal Corporation on usual terms and conditions, and in addition the following terms and conditions shall also be provided:-

A. It is made clear that the allotment of play-ground to the Petitioner Trust and the allotment of garden to Respondent No.7 - General Arunkumar Vaidya Nagar Rahivasai Sangh, will not create any right, title or interest of whatsoever nature on the said land, and the said land will continue to vest and belong to the Respondent Corporation.

B. The Petitioner Trust will only have the right to

maintain the play-ground and provide 24 hours security, and the Respondent No.7 - Rahivasi Sangh will only have the right to maintain the garden and provide 24 hours security.

C. The Petitioner Trust shall construct the compound wall around the Play Ground, and Respondent No.7-Rahivasi Sangh shall maintain the metal fencing for the garden in a proper manner.

D. The Petitioner Trust shall provide 24 hours security to the play ground and shall ensure that there is no encroachment and misuse of the same, and the Respondent No.7- Rahivasi Sangh shall provide 24 hours security to the garden and shall ensure that there is no encroachment and misuse of the garden.

E. The Petitioner Trust shall build a Tennis Court, a Cricket Pitch and a Jogging Track and shall also plant & protect more trees on the play ground's peripheral area, whereas the Respondent No.7 Rahivasi Sangh shall provide for the walking track and lawn and shall plant & protect more trees and flower plants on the garden.

F. The Petitioner Trust shall ensure that the play ground to be maintained by them will be made available to all the members of the public during the morning and evening hours, and shall allow all

the educational institutions in the vicinity for holding their annual sport competitions during Saturdays/Sundays with prior permission of the Petitioner-Trust, free of any charge for the same and without any entry fee. The Respondent No.7-Rahivasi Sangh shall ensure that the garden to be maintained by them will be made available to all the members of the public, School children and College students without any entry fee for the same.

15. The Respondent Corporation shall remove all unauthorised encroachers from the encroached area as per the Plan which is marked as "X", within a period of eight weeks.

16. Rule is made absolute in terms of the above. Petition stands disposed of accordingly.

(SMT.V.K.TAHILRAMANI, J) (DR.S.RADHAKRISHNAN,J.)